

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3666 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHESHKUMAR P MEHTA

Versus

STATE OF GUJARAT

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Appearance:

MR PS CHAMPANERI for Petitioner

Respondent No. 1 served.

MS MR VYAS for MR DD VYAS for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/05/98

ORAL JUDGEMENT

Under order dated 1st January, 1984, made by the Taluka Development Officer, Lakhtar, the petitioner was appointed as a Workcharge Karkoon on daily wages for a period of 29 days. After completion of the said period of 29 days, the petitioner was again appointed on the

same terms and conditions for a period of 29 days under order dated 1st February, 1984. It appears that in the month of January, 1987, the petitioner was again appointed on daily wages in Local Development Project by the Taluka Development Officer, Lakhtar. On 31st January, 1987, the Taluka Development Officer has made an order for payment of wages for 25 days for which the petitioner had been employed in the Local Development Project as aforesaid. Similarly, on 3rd March, 1987, the Taluka Development Officer has made an order for payment of wages for 22 days' work done by the petitioner. Similar orders of payment of wages are made by the Taluka Development Officer on 30th March, 1987, 30th April, 1987 and 29th May, 1987. All the aforesaid payments of wages have been made from the contingency grant available to the Taluka Development Officer.

The petitioner has preferred this petition under Article 226 of the Constitution of India, and has contended that the petitioner has been serving as a Workcharge Clerk since 1st January, 1984 continuously and he has been wrongfully employed for 29 days every month and is being paid salary on daily wages in contravention of the labour laws. The petitioner has claimed that the petitioner's service should not be terminated on completion of the term for which he was appointed and further he should be absorbed as a permanent Junior Clerk on the establishment of the Taluka Panchayat. It does appear that pursuant to the advertisement published by the District Panchayat Service Selection Committee, Surendranagar, the petitioner applied for appointment as a Clerk, however, it is not known whether the petitioner was selected and was appointed pursuant to such selection.

Though served, the respondent No.1 is not represented before me. On perusal of various orders made in favour of the petitioner, it appears that the Taluka Development Officer had appointed the petitioner at local level on daily wages for a specified period. It is apparent that the said appointment has not been made in accordance with the recruitment rules, nor the said appointment appears to have been made after following lawful procedure for selection and appointment to Public Employment. Thus, the petitioner's appointment having been made in contravention of the statutory rules without following the due procedure, the petitioner's prayer for permanent employment can not be accepted. The petitioner's service can not be regularised in contravention of the statutory provisions. Further it is not born out from the record that on the date of his

first appointment, the petitioner complied with all the eligibility criteria for appointment as a Junior Clerk on the establishment of the Taluka Panchayat. Since the petitioner's appointment is not made in accordance with law, his service would be governed by the terms and conditions of his appointment. His appointment orders clearly stipulate the specified period for which he was appointed and the petitioner's service would be terminated on expiry of the said term. Under the circumstances, the respondents can not be directed not to terminate the service of the petitioner on completion of the period for he was appointed. In my view, therefore, neither of the reliefs claimed by the petitioner can be granted to him.

Petition is, therefore, dismissed. Rule is discharged. Interim relief is vacated. There shall be no order as to costs.

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JOSHI